

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JEFFREY M. GOEKEN,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting  
Commissioner of Social Security,

Defendant.

**8:18CV320**

**MEMORANDUM  
AND ORDER**

This matter is before the Court on plaintiff Jeffrey M. Goeken's ("Goeken") Motion for Attorney Fees pursuant to 42 U.S.C. § 406(b) (Filing No. 38). In support of his motion, Goeken has submitted (1) an Attorney Fee Contract (Filing No. 38-1) between him and attorneys Tim Cuddigan ("Cuddigan") and Wes Kappelman ("Kappelman"), (2) a Notice of Award (Filing No. 38-2) from the Social Security Administration ("SSA"), and (3) an itemization of the time his attorneys spent on his case (Filing No. 38-3).

On May 19, 2021, the Court granted (Filing No. 32) Goeken's unopposed request for relief from an adverse judgment, *see* Fed. R. Civ. P. 60(b)(6), and remanded this case to the SSA pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings (Filing No. 34). The SSA ultimately awarded disability benefits. On August 13, 2021, the Court approved (Filing No. 36) the parties' joint stipulation for attorney fees (Filing No. 35) in the amount of \$1,000 under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d)(1)(A).

In the instant motion, Goeken requests payment of attorney fees of \$4,989 under § 406(b)(1)(A), which represents 25% of Goeken's total past-due benefits (\$10,989), less \$6,000 Cuddigan is reportedly seeking under § 406(a). Goeken's time records indicate his counsel expended 11.7 attorney hours between 2018 and 2021, which would yield a hypothetical hourly rate of \$426.41 per hour. Goeken maintains this is a reasonable fee

under *Gisbrecht v. Barnhart*, 535 U.S. 789, 808-09 (2002), given the risk of counsel not getting paid in contingency cases and “the range of awards in this region.”

Fees awarded by the Court under § 406(b) may be paid directly to counsel. *See Astrue v. Ratliff*, 560 U.S. 586, 595 (2010) (citing 42 U.S.C. § 406(b)(1)(A)); 20 C.F.R. § 404.1720(b)(4). Goeken’s counsel requests that payment be sent to Cuddigan for distribution. Counsel states that Cuddigan will reimburse to Goeken the EAJA award of \$1,000 and then disburse Kappelman’s share of the § 406(b) award.

Defendant Kilolo Kijakazi, Acting Commissioner of Social Security, does not object to an award under § 406(b) and confirms the accuracy of Goeken’s numbers. But she reminds the Court that it “must independently determine whether an attorney fee in this amount is reasonable.”

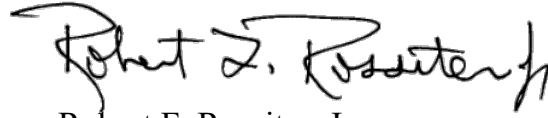
The Court has carefully conducted the requisite review and finds the requested fee award is fair and reasonable for the services rendered. In short, the Court finds the “character of the representation,” the results achieved, and the risk of nonrecovery all support the requested fee award. *Gisbrecht*, 535 U.S. at 807-08. Accordingly,

IT IS ORDERED:

1. Plaintiff Jeffrey M. Goeken’s Motion for Attorney Fees pursuant to 42 U.S.C. § 406(b) (Filing No. 38) is granted.
2. Goeken is awarded attorney fees in the amount of \$4,989.
3. The Social Security Administration shall send payment in that amount to attorney Timothy Cuddigan at his address of record.
4. Cuddigan shall then refund to Goeken the \$1,000 EAJA fee award and disburse to attorney Wes Kappelman his portion of the § 406(b) award.
5. A separate judgment will issue.

Dated this 7th day of December 2022.

BY THE COURT:

A handwritten signature in black ink, reading "Robert F. Rossiter, Jr." with a stylized flourish at the end.

Robert F. Rossiter, Jr.  
Chief United States District Judge